

**Chemical Weapons (Convention) Bill -
Follow-up to issues raised at the 7th meeting of the Bills Committee
held on 9 January 2003**

Clauses 8 and 30

Clause 8(1) of the Bill states that the operator of a facility requires a permit to operate the facility during a particular year *if, in all circumstances of the case, a reasonable person would conclude that* “Scheduled chemicals” are likely to be produced, used etc at the facility during the year. Noting the Administration’s explanation that the inclusion of the words “*if, in all circumstances of the case, a reasonable person would conclude that*” is intended to provide an objective test for determining the likelihood of the production, use etc of “Scheduled chemicals”, i.e. whether a reasonable person in the same context would conclude that “Scheduled chemicals” would likely be produced, used etc, Members asked the Administration to consider whether it would be appropriate to retain the objective test, as a reasonable person, being a outside party, may not know whether “Scheduled chemicals” are likely to be produced, used etc at the facility during a particular year

2. Upon review, we agree that it is reasonable to think that the operator of the facility should be in a better position than an ordinary person in determining whether the “Scheduled chemicals” that are likely to be produced, used etc at the facility during the year. We therefore agree to move a CSA to remove the objective test.

3. Clauses 30(1)(b), (2)(b) and (3)(b) of the Bill provide that a person who without, or otherwise than in accordance with, a permit, produces, or retains, uses etc specified “Schedule chemicals” commits an offence. Clause 30(6) provides a statutory defence that a person could prove that he took reasonable precautions and exercised due diligence to prevent the commission of the offence under clauses 30(1)(b), 2(b) and 3(b). Members asked the Administration to consider adding the words “*intentionally or recklessly*” in clauses 30(1)(b), 2(b) and 3(b), mirroring the similar provisions in section 77(1)(b) of the Chemical Weapons (Prohibition) of Australia.

4. As we explained at the meeting, clauses 30(1)(b), (2)(b) and (3)(b) are drafted on the basis that there is an objective test in clause 8(1), as we have agreed to take out the objective test, we have no objection to the suggested

addition of the words “intentionally or recklessly” in clauses 30(1)(b), (2)(b) and (3)(b) and the consequential deletion of clause 30(6). We are prepared to move Cases to effect these amendments.

Clause 9

5. In light of the Government’s policy on fees and charges, we agree that a fee should be imposed on applications for permits under clause 9 of the Bill. We are working on the charging mechanism in consultation with other relevant bureau and departments and will propose the fee level once we are in a position to do so.

Clauses 10(3), 13(2), 14(1)(e), 15(2), 21(7), 21(13)(b), 24(2), 38(1) and 43

6. We are preparing Cases to amend the Chinese version of the clauses above and will provide the Cases for Members’ consideration separately.

Commerce, Industry and Technology Bureau
February 2003